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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,709

12/08/2003

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EXAMINER

ROBERTS, LEZAH

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,709	Applicant(s) SPADINI ET AL.	
	Examiner LEZAH W. ROBERTS	Art Unit 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-12, 14, 15 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12, 14, 15 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the Amendment filed August 28, 2008. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims

Claim Rejections - 35 USC § 103 – Obviousness (New Rejections)

1) Claims 1-4, 12, 14, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Farrell et al. (US 6,063,390) and Guilbeaux (US 4,929,644).

Lentini et al. disclose self-foaming cleansing systems. The cleansing systems may be anhydrous. The anhydrous compositions are added to water to produce an effervescent effect composition. One component comprises a bicarbonate component (col. 3, lines 39-53). The second component includes an acid. The two reactive components can be dispensed from physically separate packages or from a unitary package with chambers. The components of either type of packages can be applied simultaneously or substantially simultaneously to the skin, where they commingle and react (col. 2, lines 17-30). The compositions may be formulated into solutions, colloidal dispersions, suspensions and gels (col. 6, lines 38-61).

The reference differs from the instant claims insofar as it does not disclose a specific example of a nonaqueous component comprising both active agents together in combination with an aqueous component and an organophilic particle.

Farrell et al. disclose skin compositions comprising an intimate mixture of an acid such as citric acid and an alkaline material such as sodium bicarbonate (abstract). The compositions also comprise surfactants and magnesium silicate (Tables).

The reference differs from the instant claims insofar as it does not disclose the components are in one chamber and water is in another chamber.

Guilbeaux disclose thickened organic compositions having biocidal activity. The compositions use organophilic clays in combination to provide the thickening and biocidal activity. Organophilic clays are also used in cosmetic formulations. However, since typical cosmetic formulations generally last several months and are opened frequently while coming in contact with human hands and the environment, cosmetics are exposed to a variety of microorganisms. Absent some type of biocide, these preparations could eventually introduce undesirable microorganisms onto the human skin, eyes or mucous membranes. The concept behind employing the two defined organophilic clays involves combining one which will impart superior rheological properties to the organophilic clay with another which will impart excellent biocidal activity to the composition. Hence, the composition will not need other biocidal agents which can cause adverse (e.g., allergic) reactions especially if the composition is to be used topically. Advantageously, it has been discovered that the overall rheological properties of the organophilic clay will not be diminished and may even be enhanced by

adding the organophilic clay with biocidal activity to the organic composition.

Furthermore, by providing a combination of first organophilic clays and/or a combination of second organophilic clays, the thickening and biocidal activity can be tailored to the desired level for a given organic composition (col. 7, line 60 to col. 8, line 18).

The reference differs from the instant claims insofar as it does not disclose the compositions are two part compositions comprising a first component that reacts with a second component.

It would have been obvious to combine the bicarbonate and acid in the same chamber when in an anhydrous composition of Lentini et al. because it has been disclosed in the art that the two components do not react in a dry state and the two components have been disclosed by the art in combination in anhydrous skin care compositions, as supported by Farrell et al.

It would have been obvious to one of ordinary skill in the art to have used a combination of organophilic clays in the compositions of Lentini et al. and Farrell et al. motivated by the desire to incorporate a rheology modifier suitable for cosmetics that thickens the compositions as desired and acts as a biocidal agent and remove the need for other biocidal agents that may cause adverse reactions, as disclosed by Guilbeaux.

In regards to claims 12 and 14, normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves the application of no more than routine skill in the art. See MPEP 2144.05. It would have been obvious to one of ordinary skill in the art to use a particular particle size motivated by the desire to

obtain a composition with optimal efficacy when the components are mixed and react with one another.

2) Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Farrell et al. (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Gentile et al. (US 6,161,729).

Lentini et al., Farrell et al. and Guilbeaux are discussed above. The references differ from the instant claims insofar as they do not disclose the type of valves or specific types of bottle used to store and deliver the compositions.

Gentile et al. disclose dual chamber dispenser having a duckbill valve. The duckbill valve is suitable as a metering valve and has closable valves giving the option of different flow rates for each disclosed component (col. 2, lines 46-54). The valves may also have an anti-suck back functionality, which restricts air from entering the tube after each extrusion stroke (col. 3, lines 30-35).

The reference differs from the instant claims insofar as it does not disclose the compositions that are stored in the dispensers are skin compositions comprising two reactive agents, and an organophilic particle.

It would have been obvious to one of ordinary skill in the art to have used the dispensers to store the compositions of Lentini et al., Farrell et al. and Guilbeaux motivated by the desire to keep the two components separate and to be able to deliver different amounts of each component to the targeted site when necessary or to control

the delivery of each component when the components have different flow rates, as disclosed by Gentile et al.

3) Claims 5-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Farrell et al. (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Hall et al. (US 5,316,054).

Lentini et al., Farrell et al. and Guilbeaux are discussed above. The references differ from the instant claims insofar as it does not disclose the type of cap used on the dispensers.

Hall et al. disclose container caps that have markings for measuring compositions inside a container. The primary objective of the caps is to enable quick and easy dosing of a highly concentrated liquid that is diluted with water by a certain ratio (col. 3, lines 19-23). A fill line is provided for the user in order for the correct amount of water to be added to the concentrated liquid. The cap also comprises a reservoir for the concentrated liquid so the correct amount of liquid is used (see Abstract).

The reference differs from the instant claims insofar as it does not disclose the type of composition used.

It would have been obvious to one of ordinary skill in the art to have used the caps when dispensing or storing the compositions of Lentini et al., Farrell et al. and Guilbeaux motivated by the desire to deliver the desired amount of each component to

the targeted site by being able to measure the amount of the two components when mixing, as disclosed by Hall et al.

4) Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lentini et al. (US 6,177,092) in view of Farrell et al. (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Pettengill (US 5,020,694).

Lentini et al., Farrell et al. and Guilbeaux are discussed above. The references differ from the instant claims insofar as they do not disclose a container with a pump.

Pettengill discloses multi-cavity dispensing containers. The containers are a rigid piston-type multi-cavity dispensing container for simultaneous coextrusion of two or more flowable materials in a predetermined proportion. The container has a unique outlet which is arranged to cause the outlet streams of material to flow towards each other. The outlet maintains the segregation of the different materials as they move simultaneously outward through the outlet (Abstract). The containers comprise a pump (col. 2, lines 58-60).

The reference differs from the instant claims insofar as it does not disclose the compositions that are stored in the dispensers are skin compositions comprising two reactive agents, and an organophilic particle.

It would have been obvious to one of ordinary skill in the art to have used the dispensers to store the compositions of the combined references of Lentini et al., Farrell et al. and Guilbeaux motivated by the desire to keep the two components separate and

to be able to deliver each component to the targeted site simultaneously in a predetermined proportion, as disclosed by the Pettengill.

Obvious-Type Double Patenting (Previous Rejection)

Claims 1-15 and 18 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11, 13, and 16-17 of copending Application No. 10/730,218 in view of Lentini et al. (US 6,177,092). The rejection is maintained in regards to claims 1-12, 14, 15 and 18. Claims 7 and 13 are cancelled.

Applicant's Arguments

Applicant argues if the provisional double patenting rejection is the only rejection remaining in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for application no. 10/730,218.

Examiner's Response

The double patenting rejection is not the only remaining rejection and therefore the rejection is maintained.

Claims 1-6, 8-12, 14, 15 and 18 are rejected.

Claims 19 and 20 are withdrawn.

No claims allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612